

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MERCY, INC. D/B/A AMR LAS VEGAS

and

Case 28-CA-241256

**AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES
AFSCME LOCAL 4041 (AFSCME LOCAL 4041,
EMS WORKERS UNITED-AFSCME)**

ORDER

The Respondent's Motion to Dismiss the complaint is denied. The Respondent cites no authority for its argument that the complaint must be dismissed because of undue delay. Indeed, it would be hard-pressed to do so; the unambiguous weight of both Board and Supreme Court authority holds that delay in the Board's processing of a case does not provide grounds to circumvent the administrative process and invalidate its eventual decision and order. "[T]he Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers." *NLRB v. J.H. Rutter-Rex Manufacturing Co.*, 396 U.S. 258, 265 (1969) (citing *NLRB v. Electric Vacuum Cleaner Co.*, 315 U.S. 685, 698 (1942); *NLRB v. Katz*, 369 U.S. 736, 748 n.16 (1962)). See also, e.g., *Entergy Mississippi v. NLRB*, 810 F.3d 287 (5th Cir. 2015) ("[T]he United States and its agencies are not subject to the defense of laches when enforcing a public right."). Accordingly, the Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., September 28, 2020.

MARVIN E. KAPLAN,

MEMBER

WILLIAM J. EMANUEL,

MEMBER

LAUREN McFERRAN,

MEMBER